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The following constitutes  
the order of the court. Signed September 30, 2009

Roger L. Efremsky  
U.S. Bankruptcy Judge

Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re:	)	Jointly Administered Chapter 11 Cases
	)	
<b>AVIZA TECHNOLOGY, INC.,</b>	)	Case No. 09-54511-RLE-11
A Delaware corporation	)	
Employer's Tax ID No.: 20-1979646	)	
	)	
<b>AVIZA, INC.,</b>	)	Case No. 09-54514-RLE-11
A Delaware corporation	)	
Employer's Tax ID No.: 20-0249205	)	
	)	
<b>TRIKON TECHNOLOGIES, INC.,</b>	)	Case No. 09-54515-RLE-11
A Delaware corporation	)	
Employer's Tax ID No.: 95-4054321	)	
	)	
	)	Date: September 29, 2009
Debtor(s).	)	Time: 9:30 a.m.
	)	Place: United States Bankruptcy Court
440 Kings Village Road	)	280 S. First Street, Room 3070
Scotts Valley, CA 95066	)	San Jose, CA 95113
	)	Judge: Honorable Roger L. Efremsky

**ORDER GRANTING MOTION BY DEBTORS TO SELL CERTAIN ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

A hearing on the motion filed September 9, 2009 together with the Supplement filed on

1 September 25, 2009 (collectively, the “Sale Motion”) of the above-captioned debtors and debtors in  
2 possession (collectively, the “Debtors”) was held before this Court on September 29, 2009 at 9:30  
3 a.m., and appearances were as noted on the record.

4 The Sale Motion seeks, inter alia, entry of an order authorizing and approving the sale of the  
5 Debtors’ Purchased Assets<sup>1</sup> to Sumitomo Precision Products Co., Ltd. (“Buyer”) pursuant to the  
6 terms of that certain ASSET PURCHASE AGREEMENT, dated as of August 13, 2009, by and among the  
7 Debtors, Buyer and certain direct and indirect wholly-owned subsidiaries of Debtors (the “Purchase  
8 Agreement”).

9 The Court entered an order dated August 27, 2009 (the “Bid Procedures Order”) approving  
10 the bid procedures attached as Exhibit “A” to the MOTION FOR ORDER APPROVING OVERBID  
11 PROCEDURES AND RELATED MATTERS RE SALE OF CERTAIN OF THE ASSETS OF THE DEBTORS (the  
12 “Bid Procedures”), authorizing and approving Bid Procedures to consider higher and better offers for  
13 the Debtors’ Purchased Assets, scheduling the sale hearing (including the Auction) (the “Sale  
14 Hearing”) and approving, inter alia (a) the form and manner of notice of the Sale and Bid  
15 Procedures; (b) procedures relating to certain executory contracts and unexpired leases, including  
16 notice of proposed cure amounts; and (c) the Expense Reimbursement.

17 The Court has jurisdiction to consider the Sale Motion and the relief requested therein in  
18 accordance with 28 U.S.C. §§ 157(b)(2) and 1334. After consideration of the Sale Motion and all  
19 related pleadings, any opposition thereto, and the arguments of counsel,

20 THE COURT HEREBY FINDS AND CONCLUDES THAT:<sup>2</sup>

21 A. Jurisdiction. The Court has jurisdiction over this matter and over the property of the  
22 Debtors and their estates, including the property to be sold, transferred or conveyed pursuant to the  
23 Purchase Agreement, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to  
24 28 U.S.C. § 157(b)(2). Venue of these cases and the Sale Motion is proper in this District and this  
25 Court pursuant to 28 U.S.C. §§ 1408 and 1409.

26 \_\_\_\_\_  
27 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase  
Agreement and the Sale Motion, as applicable.

28 <sup>2</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law  
pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

1 B. Statutory Predicates. The statutory predicates for the relief sought in the Sale Motion  
2 and the basis for the approvals and authorizations herein are (i) section 363 of chapter 11 of title 11  
3 of the United States Code (as amended, the “Bankruptcy Code”) and (ii) Rules 2002, 6004 and 9014  
4 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

5 C. No Stay. In order to maximize the value of the Purchased Assets, it is essential that  
6 the sale of the Purchased Assets occur within the time constraints set forth in the Purchase  
7 Agreement. Therefore, this Order is effective immediately upon entry. Notwithstanding Bankruptcy  
8 Rule 6004(h), the parties may consummate the transactions provided for under the terms and  
9 conditions of the Purchase Agreement immediately upon entry of this Order.

10 D. Retention of Jurisdiction. It is necessary and appropriate for the Court to retain  
11 jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and  
12 the Purchase Agreement, and to adjudicate, if necessary, any and all disputes relating in any way to  
13 the transactions provided for under the terms and conditions of the Purchase Agreement.

14 E. The Petition Date. On June 9, 2009 (the “Petition Date”), each of the Debtors filed  
15 voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors  
16 have continued in possession and management of their businesses and properties as debtors in  
17 possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

18 F. Notice of the Sale Motion. As evidenced by the certificates of service filed with the  
19 Court, (i) proper, timely, adequate and sufficient notice of the Sale Motion, the Auction, and the Sale  
20 Hearing have been provided in accordance with sections 102(1), and 363(b) and (f), of the  
21 Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, and 9014, the local rules of this Court,  
22 the procedural due process requirements of the United States Constitution, and in compliance with  
23 the Bid Procedures Order; (ii) such notice was proper and adequate and appropriate under the  
24 particular circumstances; and (iii) no other or further notice of the Sale Motion, the Auction, the Sale  
25 Hearing, or of the entry of this Order is necessary or shall be required.

26 G. Qualified Bidders. While certain bidders were a “Qualified Bidder” under the Bid  
27 Procedures, no Qualified Bid (as defined in the Bid Procedures) was received by the Debtors.

28 H. Good Faith. The Buyer is not an “insider” or “affiliate” of the Debtors (as such terms

1 are defined in the Bankruptcy Code). The Buyer is a purchaser in good faith, as that term is used in  
2 the Bankruptcy Code and court decisions thereunder, and is entitled to the protections of section  
3 363(m) of the Bankruptcy Code. The Purchase Agreement was negotiated and entered into in good  
4 faith, based upon arm's length bargaining, and without collusion or fraud of any kind. The sales  
5 process was conducted in accordance with the Bid Procedures Order and in good faith within the  
6 meaning of section 363(m) of the Bankruptcy Code.

7 I. No Collusion. The Buyer has not violated section 363(n) of the Bankruptcy Code by  
8 any action or inaction. The sale price to be paid by Buyer was not limited by an agreement among  
9 potential bidders at such sale. The transactions under the Purchase Agreement may not be avoided,  
10 and no damages may be assessed against the Buyer or any other party under section 363(n) of the  
11 Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

12 J. No Auction. Because no Qualified Bid was received pursuant to the Bid Procedures,  
13 the Debtors proposed Buyer as the Successful Bidder for the Debtors' Purchased Assets in  
14 accordance with the Bid Procedures Order.

15 K. The offer of the Buyer, upon the terms and conditions set forth in the Purchase  
16 Agreement, including the form and total of the consideration to be realized by the Debtors pursuant  
17 to the Purchase Agreement is the highest and best offer received by the Debtors for the Debtors'  
18 Purchased Assets.

19 L. The Debtors' businesses and the Purchased Assets have been adequately marketed  
20 and the sale process has been conducted in a commercially reasonable manner in accordance with  
21 the Bid Procedures Order.

22 M. The Debtor has presented good and sufficient business justification for the sale of the  
23 Purchased Assets pursuant to section 363 of the Bankruptcy Code and the other relief granted herein.

24 N. Section 363(f) is Satisfied. Pursuant to section 363(f) of the Bankruptcy Code, except  
25 as otherwise provided in the Purchase Agreement, effective upon the closing under the Purchase  
26 Agreement, there shall be vested in Buyer all right, title and interest of the Debtors and their  
27 bankruptcy estates in the Debtors' Purchased Assets, free and clear of all of the security interests,  
28 pledges, liens (as that term is defined in section 101(37) of the Bankruptcy Code), claims (as that

term is defined in section 101(5) of the Bankruptcy Code) and other interests set forth below (collectively, the “Encumbrances”). Unless the holders of such Encumbrances have agreed to other treatment, all such Encumbrances shall attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing.

**All persons provided notice of the Sale, including, but not limited to, persons listed as creditors on the Debtors’ Schedules or who have filed a Proof of Claim or request for notice in any of the Debtors’ cases.**

**ASML, Inc.**

**Bank of America**

**General Electric Credit Corp. of Tennessee**

**United Commercial Bank, as Agent for itself, East West Bank and Chinatrust Bank (USA)**

**For purposes of clarification with respect to IBM Credit LLC (“IBM”), the Purchased Assets do not include any equipment that is the subject of a filed UCC-1 by IBM; however, the Purchased Assets are sold free and clear of any other claim or interest IBM may assert against any of the Purchased Assets in the same manner the Debtors are selling free of any creditor on the Debtors’ Schedules or who has filed a Proof of Claim or requested notice in any of the Debtors’ cases.**

O. The Buyer shall have no obligations with respect to any Liabilities of the Debtors other than the Assumed Liabilities and its obligations under the Purchase Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The relief requested in the Sale Motion is granted in its entirety, subject to the terms and conditions contained herein.

2. All objections, responses, and requests for continuance concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied on the merits.

3. Authority to Consummate Sale. The sale of the Debtors’ Purchased Assets pursuant to the terms and conditions of the Purchase Agreement, the bid by the Buyer and the transactions

1 contemplated thereby are authorized and approved in all respects.

2       The Debtors are authorized to sell the Debtors' Purchased Assets for the Purchase Price  
3 provided in the Purchase Agreement. The Debtors are authorized to enter into the Purchase  
4 Agreement, as it may be modified by the Debtors and Buyer pursuant to Paragraph 9 herein.

5       4.       The Buyer is hereby granted and is entitled to all of the protections provided to a  
6 good faith buyer under section 363(m).

7       5.       The Debtors (including their respective officers, directors, employees and agents)  
8 hereby are authorized to fully assume, perform under, consummate and implement the terms of the  
9 Purchase Agreement together with any and all additional instruments and documents that may be  
10 reasonably necessary or desirable to implement and effectuate the terms of the Purchase Agreement,  
11 this Order and the sale of the Purchased Assets contemplated thereby, and to take all further actions  
12 as may reasonably be requested by the Buyer (or that may otherwise be necessary or appropriate) for  
13 the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing  
14 to possession, any or all of the Purchased Assets or Assumed Liabilities, or to carry out the terms of  
15 this Order, in each case without any further corporate action or orders of this Court. Without  
16 limiting the foregoing, the Debtors are authorized to execute any such releases, termination  
17 statements, assignments, consents or instruments on behalf of any third party, including the holders  
18 of any liens, claims or interests identified in Paragraph N of this Order, that are necessary or  
19 appropriate to effectuate or consummate the sale.

20       6.       Other than as provided in the Purchase Agreement (a) the Purchased Assets conveyed  
21 hereunder shall be conveyed on an "as is, where is" basis and "with all faults," and (b) the Buyer  
22 hereby waives and releases any warranties of any kind and nature with respect to the Purchased  
23 Assets conveyed hereunder, including any warranties of merchantability and of fitness for a  
24 particular purpose.

25       7.       Effective as of the Closing, (a) the sale of the Debtors' Purchased Assets by the  
26 Debtors to the Buyer shall constitute a legal, valid and effective transfer of the Debtors' Purchased  
27 Assets and shall vest Buyer with all right, title and interest of the Debtors and their bankruptcy  
28 estates in and to the Debtors' Purchased Assets, and (b) the assumption of any Assumed Liabilities

1 by the Buyer shall constitute a legal, valid and effective delegation of any Assumed Liabilities to the  
2 Buyer and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

3 8. The sale of the Purchased Assets shall vest Buyer with all right, title and interest of  
4 the Debtors and their bankruptcy estates to the Purchased Assets free and clear of any and all of the  
5 Encumbrances, with all such Encumbrances to attach to the proceeds of the sale with the same  
6 priority, validity, force, and effect, if any, as they now have in or against the Debtors' Purchased  
7 Assets, subject to all claims and defenses the Debtors may possess with respect thereto. To the  
8 extent provided for in the Purchase Agreement, any and all of the Debtors' security deposits, or other  
9 security held by landlords, lessors and other counterparties to the contracts, leases, and licenses that  
10 are to be assumed and assigned under the Purchase Agreement are being transferred and assigned to,  
11 and shall be the property of, the Buyer from and after the Closing.

12 9. Additional Provisions. Subject to the terms of the Purchase Agreement, the Purchase  
13 Agreement and any related agreements or instruments may be waived, modified, amended, or  
14 supplemented by the parties thereto, in a writing signed by both parties, upon written notice to  
15 counsel for the Creditors' Committee and counsel for the Lender with three (3) business days  
16 opportunity to object (unless waived in writing) and in accordance with the terms thereof, without  
17 further action or order of the Court; provided, however, that any such waiver, modification,  
18 amendment, or supplement does not have a material adverse effect on the Debtors' bankruptcy  
19 estates. In the event of a timely objection as provided by this Paragraph 9, such objection may be  
20 scheduled for telephonic hearing before the Court on 24 hours' notice to counsel for the Debtors,  
21 counsel for the Lender and counsel for the Creditors' Committee.

22 10. This Order is binding in all respects on the Debtors, their estates, the holders of  
23 Encumbrances, creditors of the Debtors and all persons who received notice of the Motion and any  
24 and all successors and assigns, including, without limitation, any trustee(s) appointed in these cases  
25 under any chapter of the Bankruptcy Code.

26 11. The Debtors, and any escrow agent upon the Debtors' written instruction, shall be  
27 authorized to make such disbursements on or after the Closing as are required by the Purchase  
28 Agreement or order of this Court, including, but not limited to, the payment of (a) any cure amounts



1 specified in the Court's ORDER GRANTING MOTION BY DEBTORS TO ASSUME AND ASSIGN  
2 EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE OF CERTAIN  
3 ASSETS OF THE DEBTORS; and (b) the Lender's allowed secured claim, subject to the terms and  
4 conditions of that certain ORDER APPROVING USE OF CASH COLLATERAL dated July 31, 2009. Any  
5 disputes with respect to the escrow, including any escrow demands, shall be determined by the  
6 Bankruptcy Court upon motion on not less than seven (7) days' notice.

7 12. Effective as of the Closing, the Buyer and its respective successors and assigns shall  
8 be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of  
9 substitution, in the Debtors' name and stead, on behalf and for the benefit of the Buyer, its  
10 successors and assigns, to demand and receive any and all of the Debtors' Purchased Assets and to  
11 give receipts and releases for and in respect of the Debtors' Purchased Assets, or any part thereof,  
12 and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Buyer  
13 and its respective successors and assigns, any and all proceedings at law, in equity or otherwise,  
14 which the Buyer and its successors and assigns, may deem proper for the collection or reduction to  
15 possession of any of the Debtors' Purchased Assets, and to do all acts and things with respect to the  
16 Debtors' Purchased Assets which the Buyer and its successors and assigns, shall deem desirable.  
17 The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

18 13. To the extent the transactions contemplated by the Purchase Agreement require the  
19 transfer by the Debtors of any licenses, permits, registrations or governmental authorization, the  
20 Debtors are authorized to transfer such licenses, permits, registrations or governmental authorization  
21 to the Buyer or its successors and assigns as of the Closing Date, to the fullest extent permitted under  
22 applicable law.

23 14. Upon the Closing, the Debtors are authorized to pay Needham the Sale Fee in the  
24 amount of \$600,000 plus reimbursement for reasonable expenses incurred through September 25,  
25 2009 in the amount of \$11,147.15, without further application to the Court. As authorized by the  
26 Needham Employment Order, Needham may seek reimbursement of additional expenses up to  
27 \$13,852.85 (i.e., such that the total expenses reimbursed do not exceed \$25,000) without application  
28 to the Court, subject to review and approval of such additional expenses by the Debtors, the



1 Creditors' Committee, the Lender and the Office of the United States Trustee. In the event of any  
2 dispute regarding such additional expenses, Needham may request that the matter be set for hearing.

3 15. Upon the Closing, the Debtors are authorized to change their names to "ATI  
4 Liquidating, Inc.," "AI Liquidating, Inc." and "TTI Liquidating, Inc.," respectively, and to file all  
5 documents as are necessary to reflect such name changes. Upon Closing, the Debtors are authorized  
6 to file, and all such pleadings shall be docketed, under the Debtors' new names "ATI Liquidating,  
7 Inc.," "AI Liquidating, Inc." and "TTI Liquidating, Inc.," respectively, consistent with the proposed  
8 form of caption attached as Exhibit "C" to the Kaelin Declaration.

9 16. Nothing in any order of this Court or contained in any plan of reorganization or  
10 liquidation confirmed in the Cases, or in any subsequent or converted cases of the Debtors under  
11 chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions  
12 of the Purchase Agreement or the terms of this Order.

13 17. This Court shall retain jurisdiction even after the closing of these chapter 11 Cases to:

14 a. interpret, implement, and enforce the terms and provisions of this Order, the  
15 Bid Procedures Order, and the Purchase Agreement, all amendments thereto and any waivers or  
16 consents thereunder and each of the agreements executed in connection therewith in all respects;

17 b. decide any disputes concerning this Order, the Purchase Agreement, or the  
18 rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase  
19 Agreement and this Order including, but not limited to, the interpretation of the terms, conditions  
20 and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and all issues  
21 and disputes arising in connection with the relief authorized herein, inclusive of those concerning the  
22 transfer of the assets free and clear of all Encumbrances;

23 c. protect the Buyer, or Purchased Assets, against any of the Encumbrances as  
24 provided;

25 d. compel delivery of all Purchased Assets to the Buyer;

26 e. adjudicate any and all disputes concerning alleged pre-Closing Encumbrances  
27 in and to the Purchased Assets including without limitation the extent, validity, enforceability,  
28 priority, and nature of any and all such alleged Encumbrances;

1 f. adjudicate any and all disputes relating to the Debtors' right, title, or interest  
2 in the Purchased Assets and the proceeds thereof; and

3 g. re-open the Debtors' chapter 11 Cases to determine any of the foregoing.

4 **APPROVED AS TO CONTENT AND FORM:**

5 **BINGHAM MCCUTCHEN LLP**

6  
7 By: /s/ William Bates, Esq.  
8 William Bates, Esq.  
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17 Creditors

18 **JEFFER, MANGELS, BUTLER & MARMARO LLP**

19 By: /s/ Walter W. Gouldsbury, III  
20 Walter W. Gouldsbury III  
Attorneys for IBM Corporation and IBM Credit, LLC

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22 \*\* END OF ORDER \*\*  
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27  
28

**Court Service List**

**Debtors**

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**U.S. Trustee**

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